IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 642 OF 2005.

Kamal Fakira Watekari. ... Appellant.

Versus.

Smt.Shantabai Dharmanna Kakanake. ... Respondent.

Shri S.G.Deshmukh for the Appellant.

Shri Anilkumar Patil for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 2nd May, 2006.

P.C.:

1. Heard Shri Deshmukh for the Appellant and Shri Patil for the Respondents. Shri Deshmukh appearing for the Appellant/original Defendant submits that the bar created by section 23 of the Hindu Succession Act was very much applicable as the pursis filed by the Defendant No.3 for challenging partition cannot be termed as his pleadings claiming partition. He submitted that as the suit was filed by a female member claiming partition of the house property the same was not maintainable.

2. I have considered the submissions. The Appellate Court has referred to pursis filed by Defendant No.3 at Exh.79. Defendant No.3 is the male member of the family. In the said purshis it is stated that he was also desirous of claiming partition and separate possession of his share in the said property.

Accordingly the Appellate Court has passed a decree for partition and for grant of separate share of the male member of the family who claimed partition. Apart from this, there is a finding of fact recorded by the Appellate Court holding that the house property in question is not wholly occupied by the members of the family. Therefore, the Appellante Court held that section 23 of the Hindu Succession Act has no application.

3. There is no error in the view taken by the Appellate Court. No substantial question of law arises.

Second Appeal is dismissed.

Judge.